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In re Application of
FRESKGARD et al
Application No.: 10/589,551
PCT No.: PCT/DK2005/000106
Int. Filing Date: 17 February 2005
Priority Date: 17 February 2004
Attorney's Docket No.: FRESKGARD 10
For: METHOD FOR ... HYBRIDISATION

DECISION ON
PETITION
UNDER 37 CFR 1.181

This decision is in response to the "PETITION TO VACATE ERRONEOUS HOLDING OF ABANDONMENT," filed on 04 September 2008 which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the abandonment mailed August 22, 2008 because the Sequence Listing was timely filed.

BACKGROUND

On 16 August 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and a translation into English of the international application was provided with the transmittal letter. However, no executed declaration and sequence listing were submitted at such time.

On 16 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicants, inter alia, that an "Oath or declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date," and a "sequence Listing" as required by 37 CFR 1.821(c)" must be submitted within two (2) months from the date of this Notice or 32 months from the priority date of the application. Failure to properly respond will result in abandoned.

In response to the "NOTIFICATION OF MISSING REQUIREMENTS" mailed on 17 September 2007, applicants filed an executed declaration, a paper sequence listing (54 pp), a CFR and a paper entitled "Response to "Sequence Listing Requirement" with the USPTO on 17 September 2007.

On 22 August 2008, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909), which indicated that applicant had failed to properly respond to notification of missing requirements mailed 04/16/07, regarding sequence requirement. According to STIC, as of 08/07/08, a transfer request was filed on 09/17/07. No transfer request was found in application. No CRF has been file.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 22 August 2008, petitioner filed on 04 September 2008 the instant petition requesting withdrawal of the Notice of Abandonment. In support of the petition, applicant has provided, *inter alia*, a copy of return itemized postcard.

DISCUSSION

A review of the file indicates that the paper sequence listing (54 pp), and the CFR were received at the USPTO on 17 September 2007.

Accordingly, applicant's response, the sequence listing filed on 17 September 2007 is considered timely and has been entered by the USPTO. Accordingly, the instant application has been improperly abandoned.

DECISION

The petition under 37 CFR 1.181 is **GRANTED**.

Applicant's request to withdraw the "NOTIFICATION OF ABANDONMENT" is **GRANTED**. The NOTIFICATION OF ABANDONMENT, mailed 22 August 2008 has been **VACATED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision. The 35 USC 371(c)(1), (c)(2), and (c)(4) date of this application is **17 September 2007**.


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